* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P. (C) No. 9018-19/2006**

Date of decision: 17th August, 2007

% M/s. Fibro Plast & Others .....Petitioners
Through: Mr.Riju Raj Jamwal, Advocate.

versus

Union of India & Others ..... Respondents
Through: Mr. Meet Malhotra with
Mr. Ravi. S. Chauhan and
Mr. Ramnish Khanna, Advocates.

CORAM:
HON'BLE MR. JUSTICE A. K. SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J (Oral)

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1. Rule D.B.

2. With the consent of parties, we proceed to finally hear and dispose of this Writ Petition.

3. The petitioner in this petition under Article 226 of the Constitution of India seeks a writ in the nature of certiorari to quash

the letter of rejection dated 5th May 2006, issued by the respondent authorities whereby it was communicated that the petitioner's bid for category III-A vessels has been technically rejected and the petitioner's earnest money deposit of Rs.30 lakhs was returned. The petitioner has further sought a writ in the nature of mandamus to direct the respondent authorities to consider and accept the technical offer made by the petitioner. Other consequential reliefs have also been prayed for by the petitioner.

4. The respondents issued a Global Notice Inviting Tender (GNIT) No.01/2005 dated 6th June 2005 for “Design, Construction and Supply of 109 numbers Newly Built Custom Vessels under Four Categories:-(1) Category I; (2)Category II; Category III(A), and Category III (B).”

5. Category III(A), with which we are concerned, were Boats with the specifications: “9 meters Loa, 30 knots, Rigid Inflatable Vessels, (RIBs) FRP hulls.” 30 such category III(A) Boats were required by the respondent.

6. The petitioner, who is engaged in the business of designing, constructing and supplying Boats for the last about 3 decades, submitted its bid for supplying category III(A) Boats. Respondents have, by the impugned communication dated 5th May 2006, rejected the bid of the petitioner on technical grounds.

7. The petitioner submits that the bids received by the

respondents were opened on 15th September 2005, and at that stage it transpired that there were a total of 3 tenderers apart from the petitioner. Respondent No. 3 sought certain clarifications on 28th November 2005 from the petitioner, which pertained to the pre-qualification technical specifications of Category III(A) vessels. These clarifications were furnished by the petitioner on 5th December 2005. According to the petitioner it made full compliance of the pre-qualification technical and commercial specifications while rendering its clarifications. Thereafter, no further clarification was sought by the Respondent, except the extension of the bank draft submitted by the petitioners as earnest money deposit.

8. The grievance of the petitioner is that the rejection of the petitioner's bid is completely devoid of any reasons. Efforts made by the petitioner even after the rejection to learn about the reasons for rejection of their bid have also proved futile. It is further submitted that one of the other bidders M/s. Goa Shipyard Ltd. has been technically approved for commercial bid opening. This, according to the petitioner, is strange considering that M/s. Goa Shipyard Ltd. had in fact sought the help of the petitioner to supply them with the necessary technology to create boat building facilities, train their manpower, provide knowhow and to technically supervise the boat construction and offer other related services. It is therefore evident, the petitioner claims, that M/s. Goa Shipyard Ltd. had no expertise in

manufacture of Boats of the kind required to be supplied under the tender. It is stated that M/s. Goa Shipyard Ltd. is engaged in building Steel Ships and have no experience or capabilities to supply FRP Boats i.e. Boats made of Fiber Plastic whereas the petitioner is in the business of building FRP Boats for the last over 26 years. The petitioner states that it has been supplying similar size FRP Boats to the defense organisations.

9. In response to the show cause notice issued to the respondents, they have filed their affidavit through the Commissioner, Directorate of Logistic, dated 5th October 2006. The respondents defence is that the tender of the petitioner was examined in detail by a Technical Evaluation Committee (TEC) under the Chairmanship of Shri A.P. Kala, Director General of Revenue Inteligence (DGRI) having a total of six members, who are experts in their fields from different organisations. The members of the Technical Evaluation Committee (TEC) were:

i) Cdr. C.S. Baburaj, Joint Director (Marine Engineering);

ii) Lt. Cdr. A. Vinith, Deputy Director (Naval Architecture) Indian Navy;

iii) Comdt. A.K. Biswas, Joint Director – Post Guard;

iv) Shri R.K. Kalra, Principal Surveyor - Indian Register of Shipping;

v) Shri S.K. Sinha, Commissioner, (Logistic), and;

vi)Capt. (IN) A.R.C. Varma, Additional Director (Marine), Directorate of Logistic, customs and Central Excise.

10. It is stated that the TEC on the technical evaluation of the bid of the petitioner unanimously rejected the same. The recommendations of the Technical Evaluation Committee were accepted after due analysis by the Department of Revenue, Ministry of Finance.

11. The Respondents have produced the original records pertaining to the tender in question. We have perused the report of the Technical Evaluation Committee.

12. From the record it appears that some of the members of the Technical Evaluation Committee visited the facility of the petitioner on 7th December 2005 to evaluate their capabilities to manufacture and supply the Boats in question. The aim of the visit was stated to be to confirm various aspects which are essential for quality and timely delivery of the vessels and to ensure that the conditions laid down in the GNIT are being met by the petitioner. The endeavour of the members who visited the facility of the petitioner was to seek answers to the following queries:

a) Is the yard having FRP/GRP building facility?

b) Is the yard got seawater front for conduct of sea trials of the vessels built?

c) Is the yard currently in business?

d) Has the builder built similar type and size of vessels in the past?

e) Can the builder meet and delivery schedule considering the present order, their performance and available manpower?

f) Any other aspect concerning the supply of Vessels?

13. The conclusions drawn from the said visit on the aforesaid queries were as follows:

"a) M/s. Fibroplast is having FRP/GRP laying facility using hand method only. This is considered to be laborious and the lowest standard in quality control. World over methods have developed where spray methods are used for spraying Resin and accelerator; or spraying the same alongwith Fibreglass. Further enhancements in technology has infusion methods used either by Vacuum infusion or Impregnated infusion. The technology required for the quality production and excellent finish is the Infusion Technique. This is not available with M/s. Fibroplast. Also a lot remains to be desired in the moulding shop, where the laying of FRP.GRP taking place, especially for controls of temperature, dust or humidity etc. There was only one window type air conditioner in the entire big hall. The curing of FRP/GRP in a controlled condition is absolutely necessary for its strength and long life. The bay space indicated limited hull space.

b) There is no water front or suitable tank whatsoever. On completion of a hull, various prototype tests are required to be carried out like -Swamp test, inclining test, drop test etc. It was further informed that the initial trials are carried out in the river Jamuna water and subsequently the vessel is taken to the place of delivery and then the sea trials are

conducted. This is not acceptable because firstly the water stretch available for trials in the river Jamuna is hardly one kilometer in length, secondly it's very dirty and thirdly the depth of water is not sufficient. Taking a vessel to the place of delivery without conducting adequate and proper trials may lead to unavoidable delays. The custom marine dept. may not be able to account for these delays leading to penalties/liquidity damages and ultimately delays in the delivery of each vessel.

c) The building is currently in business, but there are no orders similar to the vessel needed by Customs.

d) The builder has so far not built similar type and size of vessels as required by Customs. The maximum length of the RIB (Rigid Inflatable Boat) built by them is 6.5 m. only. They don't even have the mould for 9 m vessels. The CEO of the firm explained that they would make a fresh mould by interpolating from 6.5 m hull mould, and extending it to 9m. However, this explanation was hypothetical.

e) So far the builder has been executing orders for simpler boats like Whaler for NCC, fishing boats and other smaller vessels for Army/Navy where delay in delivery has been generally accepted without any serious consequences. It appeared that the builder is making vessels at their own pace without much urgency.

4. Conclusion:

Considering the various aspects brought out above, it can be concluded that the builder is not totally geared up to produce the quality vessels with excellent finish as specified in the Global Tender Document. Also the builder is not having any experience of building similar

> type and size vessels. There is no seawater front available for conduct of trials and this will definitely add to the delays in the inspection of vessels and certification. The sea conditions are absolutely different and there can be no comparison with that of river Jamuna. The delivery of vessels as per the contract at the rate of one vessel every fortnight after initial period of four months from the date of ordering does not seems to be possible." (emphasis supplied).

14. The respondents have drawn our attention to paras 2.19. and 2.20 of the GNIT which read as follows:

> "2.19 The tenderer should have their own Building Yard with manufacturing facilities and water front suitable to build the types of Vessels being offered by the builders under four different categories i.e. Categories I, II, II(A) and III(B). The applicant should be presently an active Builder engaged in construction of similar Ocean going Vessels."

> "2.20 The tenderer should have a proven track record of having built similar type of FRP vessels and delivered at last 5 (Five) vessels of the size for which offer is being made or larger Vessels of similar type. Firms, that have supplied, in India or abroad in the past and have capacity and capability for supplying similar Vessels are eligible to participate in the tender."

15. Respondents submit that the petitioner did not satisfy either of the aforesaid tender conditions, inasmuch as, the petitioner was not found to be an active builder engaged in the business of similar type of FRP vessels presently. Moreover, the petitioner did not have the proven track record, required under para 2.20, of having built and delivered similar type of FRP vessel, atleast 5 in numbers of the size for which the offer was made or larger vessels of similar type.

Respondents submit that the Technical Evaluation Committee gave the detailed findings in their report on the basis of the evaluation of the bids of each of the bidders. From the report it appears that the Technical Evaluation Committee did not find the petitioner geared up to design and produce quality boats as specified in the GNIT No.01.2005 for category III(A) vessel. They did not have the facility to try their vessel in sea conditions in their ship building yard and their crafts would have to be carried to Mumbai or Chennai after construction for Sea trials from Noida, UP. If the vessels are found with some defects they would have to be brought back to Noida for rectification which would delay the supplies. Further and even more importantly, the Technical Evaluation Committee found that the petitioner does not have past experience of building 09 meter Rigid Inflatable Boat (RIBs) type category III(A) Boats as per the technical specifications.

16. On the other hand, the Technical Evaluation Committee found M/s. Goa Shipyard Ltd. is capable of building and delivering quality vessel of all the four categories as per the schedule under the collaboration with M/s. V.T. Helmatic, UK.

17. The respondent's further contention is that the petitioner had failed to specify that it had, in the past, manufactured and supplied vessels of similar capability. In particular, the Respondent highlighted that the petitioner had not established to have

manufactured any Sea going Vessel so far:

i) which can attain the speed of 30 nautical miles per hour. It is evident that the petitioner have not manufactured such high speed vessels.

ii) having a total power requirement of 400 Horse Power (Two outboard motor engines of 200 HP each). The maximum power achieved by the petitioner is only 75 HP.

iii) having a Self Righting property, which means that the vessel will return to upright position without the assistance of the occupants after turning turtle even by 180 degrees. The petitioner has never built a self righting vessel of 09 meter.

18. List of the major orders executed since 1995 submitted by the petitioner with its Technical offer indicates that they have not built any Sea going vessel of Type Rigid Inflatable Boat of 9 mtr. length which is the length specified for Cat III(A).

19. From a perusal of the rejoinder filed by the petitioner, and also from the arguments advanced by the learned Counsel for the Petitioner at the time of hearing, it appears that there is merit in the submission of the respondents that the petitioner had failed to establish its credentials by meeting the requisite qualifications contained in paragraphs 2.19 and 2.20 of the GNIT. In their rejoinder affidavit, the petitioner vaguely states that they have manufactured vessels of the size, and with the capabilities as set out herein above. However, no specific instances, details, or supporting documents have been produced by the petitioners with their rejoinder. More

importantly, it is not even their submission that they had produced the relevant information before the respondents and their Technical Evaluation Committee at the time of technical evaluation of their bid.

20. Even otherwise, in matters requiring technical expertise, courts would leave the matters for decision of those who are qualified to address the issues. Unless the action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the court will not interfere with such matters. (See ***Federation of Railways Officers Association vs . UOI***, AIR 2003 SC 1344, para 12).

2. In view of the aforesaid discussion, we are satisfy that there is no illegality or arbitrariness in the rejection of the petitioner's technical bid by the respondents. We find no merit in the petition and consequently the writ petition stands dismissed.

VIPIN SANGHI, J.

A.K.SIKRI, J.

August 17, 2007
P.K. BABBAR